

Status of Bay/Delta Conservation Plan ("BDCP") DEIS Review
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WHAT IS THE BDCP AND WHO IS INVOLVED?

- The BDCP is a proposed Habitat Conservation Plan ("HCP") to support a 50-year Incidental Take Permit under the federal Endangered Species Act, and a Natural Communities Conservation Plan under the CA Endangered Species Act.
- A joint DEIS/DEIR regarding the BDCP, issued under NEPA/CEQA, is currently out for public review; comments are due April 14th.
- The lead federal agencies are FWS, NMFS, and BOR; the State lead is California Department of Water Resources ("DWR"). The HCP and the EIS/EIR are funded by the water exporters (the "applicants") and are being prepared by consultants directed primarily by DWR.
- The tunnels, along with various undefined restoration projects, are proposed as "conservation measures" to meet the dual goals of restoring the Bay/Delta ecosystem and ensuring a more reliable water supply for the water user communities.

KEY CONCERNS

- **Operation of the proposed tunnels would likely contribute to the degradation of waters already listed as impaired under the CWA and the decline of endangered species that the project is intended to restore.** The modeled operations of the proposed new intakes assume continuation of the current water allocations, which are already resulting in poor water quality and contributing to the decline of species. Continuation of such status quo operations would be unrealistic given climate change scenarios, "take limits" for listed fishes, drought, limitations on future reservoir operations, and potential inequities regarding upstream water rights.
- **Critical information that the action agencies need in order to issue permits is lacking.** Although described as a project-level DEIS for the tunnel construction, and as a programmatic DEIS for everything else, the document lacks project-level analysis, e.g., engineering designs for the tunnels; clarity regarding operations; analysis of impacts to covered fish species; funding for restoration activities; and mitigation for drinking water impacts. The Corps of Engineers has already indicated that the level of detail in the current documents is not sufficient to support a CWA 404 permit determination nor a Section 408 Letter of Permission for necessary Corps levee modifications.
- **Ex. 5 - Deliberative** Every alternative analyzed in the DEIS would adversely affect water quality and endangered species. The DEIS itself acknowledges that at least some of the alternatives would have unacceptable adverse impacts to water quality, beneficial uses, and endangered species. No preferred NEPA alternative is identified (although one is identified for CEQA); therefore, EPA must rate all alternatives.

KEY MESSAGES TO BRING TO CEQ MEETING

- **FWS/NMFS/BOR national offices should publicly state that the project is not permissible as proposed.** These federal lead agencies have indicated this position in private federal meetings in the Region and in Washington DC, but have not stated this publicly. To accurately reflect what appears to be a consensus federal position, these lead agencies should publicly state their issues and concerns about the project as proposed in the DEIS/DEIR.
- **A Revised or Supplemental DEIS should be circulated for public review.** The lead federal agencies should be informed of the likely adverse rating and be asked to commit to prepare a Revised or Supplemental DEIS for further public review. The DEIS acknowledges that supplemental NEPA documentation will be needed for all of the 21 HCP restoration measures *except the tunnels*. Based on our review so far, EPA believes that the deficiencies of the document are so great that public review of a Revised or Supplemental DEIS is likely needed for the tunnels as well, which should be evaluated in the context of greater specificity regarding the full suite of conservation measures.
- **The lead federal agencies should commit to fully evaluate additional reasonable alternatives in the Revised or Supplemental DEIS, including the "Portfolio Approach" proposed by a coalition of municipal water agencies and NGOs.** The "Portfolio Approach" was summarily dismissed by CA DWR when it was first proposed; EPA believes it warrants further consideration in an expanded suite of reasonable alternatives.

ISSUES RAISED BY THE LEAD FEDERAL AGENCIES ON THE ADMINISTRATIVE DEIS IN JULY 2013

- In their July 2013 comments to DWR and the consultants on the Administrative DEIS, the federal lead agencies raised a number of significant issues about the document:

NMFS: “The lack of analysis of upstream operations and related effects may render this document insufficient to provide NEPA compliance for the full suite of actions necessary to integrate the BDCP into CVP operations”. . . “Though the Federal agencies have had significant input into the EA (effects analysis), it is still a consultant drafted document guided by the permit applicants with several unresolved issues related to the analytical methods and resultant conclusions regarding project effects on covered species. The Federal agencies have responsibility for the content of the EIS as we (NMFS) are a co-lead and therefore must fully support the methodology and conclusions reached in the document. The EA is not a Federal agency document, it is still under review, and we have not accepted all of its methodology and conclusions.”

FWS: “The FWS believes that the draft BDCP ADEIS is insufficient at this time as a disclosure document and is not yet adequate in providing all information and analyses necessary for a decision-maker to make an informed choice between alternatives”. . . “The ADEIS is missing a clear, full and complete project description of the proposed action and detailed information needed to do a complete project specific level impact analysis for CM1. Additionally, the ADEIS does not provide an equal level of analysis of all alternatives”.

BOR: “The identification of adverse and beneficial impacts is very subjective and appears to be based on a misreading of NEPA regulations”. . . “Analysis of upstream affects may not be sufficient to serve as NEPA compliance for Reclamation to accept BiOp depending on the outcome of pending 9th circuit appeal filed by NRDC specific to NEPA analysis of RPA prior to implementation by Action Agency”.

- At the time the DEIS was published, the lead federal agencies acknowledged to EPA Region 9 that these issues were still unresolved and, for this reason, they did not identify a preferred alternative.

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